

\*E-Filed 5/22/09\*

1 FRANCIS M. GREGOREK (144785)  
gregorek@whafh.com  
2 BETSY C. MANIFOLD (182450)  
manifold@whafh.com  
3 RACHELE R. RICKERT (190634)  
rickert@whafh.com  
4 WOLF HALDENSTEIN ADLER  
FREEMAN & HERZ LLP  
5 750 B Street, Suite 2770  
San Diego, CA 92101  
6 Telephone: 619/239-4599  
7 Facsimile: 619/234-4599

8 MARK C. RIFKIN (*pro hac vice*)  
rifkin@whafh.com  
9 ALEXANDER H. SCHMIDT (*pro hac vice*)  
schmidt@whafh.com  
10 MARTIN E. RESTITUYO (*pro hac vice*)  
restituyo@whafh.com  
11 WOLF HALDENSTEIN ADLER  
FREEMAN & HERZ LLP  
12 270 Madison Avenue  
13 New York, NY 10016  
Telephone: 212/545-4600  
14 Facsimile: 212/545-4677  
Plaintiffs' Interim Lead Counsel

10  
11 UNITED STATES DISTRICT COURT  
12  
13 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
14  
15 SAN JOSE DIVISION

STIPULATED PROTECTIVE ORDER  
MASTER FILE NO. C 07-05152 JW

## **STIPULATED PROTECTIVE ORDER**

WHEREAS, certain documents and information have been and may be sought, produced or exhibited by and between the parties to the above-styled proceeding (the "Proceeding") which relate to the parties' financial information, competitive information, personnel information or other kinds of commercially sensitive information which the party making the production deems confidential; and

WHEREAS, it has been agreed by and among the parties to the Proceeding, through their respective counsel, that, to expedite the flow of discovery material and to preserve the confidentiality of certain documents and information, a protective order should be entered by the Court; and

WHEREAS, the Court has reviewed the terms and conditions of this Protective Order,

**IT IS HEREBY ORDERED THAT:**

## 1. SCOPE

1.1 This Protective Order shall govern all documents, the information contained therein, and all other information produced or disclosed during the Proceeding whether revealed in a document, deposition, other testimony, discovery response or otherwise (“Discovery Materials”), by any party in this Proceeding (the “Producing Party”) to any other party (the “Receiving Party”) when same is designated with the procedures set forth herein. This Protective Order is binding upon the parties to the Proceeding, including their respective corporate parents, subsidiaries and affiliates as well as their respective attorneys, agents, representatives, officers and employees and others as set forth in this Protective Order.

1.2 Under this Order, any Producing Party shall have the right to identify and designate as “Confidential” any document or other materials it produces or provides, or any testimony given in this proceeding, which testimony or discovery material is believed in good faith by that Producing Party to constitute, reflect or disclose its confidential and proprietary information, as those terms are understood under Rule 26(c) of the Federal Rules of Civil Procedure (“Designated Material”). The Producing Party will designate materials as “Confidential” if such party has a good faith belief that the material is entitled to confidential treatment. All material marked

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1   “CONFIDENTIAL” must be properly subject to protection under Rule 26(c) of the Federal Rules  
2   of Civil Procedure and counsel shall not designate any discovery material “CONFIDENTIAL”  
3   without first making a good faith determination that such protection is warranted.

4       1.3    “Confidential Information” as used herein means any Designated Material that is  
5   designated pursuant to this Protective Order as “Confidential” by the Producing Party, whether it  
6   is a document, information contained in a document, information revealed during a deposition or  
7   other testimony, information revealed in an interrogatory answer or information otherwise  
8   revealed.

9       1.4    All documents and information described in Paragraphs 1.2 and 1.3 as Confidential  
10   Information and which a party believes to be extremely sensitive confidential and/or proprietary  
11   information, the disclosure of which, even limited to the restrictions placed on Confidential  
12   Information in this Order, may compromise and/or jeopardize the Producing Party’s business  
13   interests, may be designated as “Highly Confidential – Attorneys’ Eyes Only” by said party and  
14   furnished to the other parties pursuant to this Order.

15       1.5    A party may designate as “Confidential” or “Highly Confidential – Attorneys’ Eyes  
16   Only” information contained in documents that are in the possession of a third party if the  
17   documents contain the party’s “Confidential” or “Highly Confidential – Attorneys’ Eyes Only”  
18   information.

19       1.6    All Discovery Materials designated “Confidential” or “Highly Confidential –  
20   Attorneys’ Eyes Only” (collectively, “Protected Material”), unless re-designated by the Producing  
21   Party voluntarily or after a successful challenge to such designation by a Receiving Party under  
22   paragraph 5 below, shall be used by Receiving Parties only for purposes of this litigation.

23       2.    DESIGNATION OF CONFIDENTIALITY.

24       The Producing Party may designate documents, electronically stored information (“ESI”)  
25   or other materials “Confidential” or “Highly Confidential – Attorneys’ Eyes Only,” as specified  
26   below. The Producing Party shall apply a confidentiality designation only when that party has a  
27   reasonable, good faith belief that the information so designated constitutes “Confidential” or  
28   “Highly Confidential – Attorneys’ Eyes Only” material. The protections conferred by this Order

1 cover not only the protected information itself, but also any information copied or extracted  
2 therefrom, as well as copies, excerpts, summaries, or compilations thereof, plus testimony,  
3 conversations, or presentations by Parties or Counsel to or in court or in other settings that might  
4 disclose Protected Material to persons not authorized to receive such material.

5       2.1     Manner and Timing of Designations. Except as otherwise provided in this Order,  
6 or as otherwise stipulated or ordered, Discovery Materials must be designated for protection under  
7 this Order by clearly designating the material before it is disclosed or produced.

8       2.2     The designation of materials as “Confidential” or “Highly Confidential –  
9 Attorneys’ Eyes Only” shall be made as follows:

10       (a)    for produced documents, by imprinting the word(s) “Confidential” or  
11 “Highly Confidential – Attorneys’ Eyes Only” on the face of each page of a document so  
12 designated or in a similarly conspicuous location for non-document materials. Use of the legend  
13 “Highly Confidential” shall be construed as and shall have the same meaning and effect of use as  
14 the legend “Highly Confidential – Attorneys’ Eyes Only”;

15       (b)    for written discovery responses, by imprinting the word(s) “Confidential” or  
16 “Highly Confidential – Attorneys’ Eyes Only” next to or above any response to a discovery  
17 request or on each page of a response;

18       (c)    for depositions, by indicating on the record at the deposition which portions  
19 of the transcript and/or responses should be treated as “Confidential” or “Highly Confidential –  
20 Attorneys’ Eyes Only.” Alternatively, within thirty (30) days of receipt of a transcript or  
21 recording of a deposition or other pretrial or trial proceeding, the offering or sponsoring Party or  
22 non-party may designate such transcript or recording or any portion thereof as “Confidential” or  
23 “Highly Confidential – Attorneys’ Eyes Only” by notifying all Parties, in writing, of the specific  
24 pages and lines of the transcript or recording that should be treated as “Confidential” or “Highly  
25 Confidential – Attorneys’ Eyes Only.” All transcripts or recordings of depositions shall be treated  
26 as “Highly Confidential – Attorneys’ Eyes Only” for thirty (30) days after receipt of the transcript  
27 or recording, or until written notice of a designation is received, whichever occurs first. Transcript  
28 pages containing Protected Material must be separately bound by the court reporter, who must

1 affix to the top of each such page the legend "Confidential" or "Highly Confidential – Attorneys'  
 2 Eyes Only," as instructed by the Party or non-party offering or sponsoring the witness or  
 3 presenting the testimony;

4 (d) for ESI, either by imprinting the word "Confidential" or "Highly  
 5 Confidential – Attorneys' Eyes Only" on any disk or storage medium, or on the face of each page  
 6 of a document so designated, or by designating the production as "Confidential" or "Highly  
 7 Confidential – Attorneys' Eyes Only" in the transmittal cover letter.

8       2.3    Upward Designation of Information or Items Produced by Other Parties or Non-  
 9 Parties. Subject to the standards of paragraph 2, a Party may upward designate (i.e., change any  
 10 documents or other material produced without a designation to a designation of "Confidential" or  
 11 "Highly Confidential – Attorneys' Eyes Only" or designate any Designated Material produced as  
 12 "Confidential" to a designation of "Highly Confidential – Attorneys' Eyes Only") any documents  
 13 or materials produced by any other Party or non-party, provided that said Discovery Materials  
 14 contains the upward designating Party's own trade secrets or other confidential research,  
 15 development, financial, personal, or commercially sensitive information, or otherwise is entitled to  
 16 protective treatment under Fed. R. Civ. P. 26(c).

17       Upward designation shall be accomplished by providing written notice to all Parties  
 18 identifying (by Bates number or other individually identifiable information) the Discovery  
 19 Materials to be re-designated within sixty days of production by the Producing Party. Failure to  
 20 upward designate within sixty days of production, alone, will not prevent a Party from obtaining  
 21 the agreement of all Parties to upward designate certain Discovery Materials or from moving the  
 22 Court for such relief. Any Party may object to the upward designation of Discovery Materials  
 23 pursuant to the procedures set forth in paragraph 5 regarding challenging designations.

24 3.    ACCESS TO AND USE OF PROTECTED MATERIAL.

25       3.1    Disclosure of Confidential Information. Unless otherwise ordered by the Court or  
 26 permitted in writing by the party or non-party that designates Discovery Materials as Confidential  
 27 or Highly Confidential ("Designating Party"), a Receiving Party may disclose any information or  
 28 item designated as "Confidential" only:

5 (b) to any Expert to whom disclosure is reasonably necessary for this litigation  
6 who has signed the "Agreement to Be Bound by Protective Order" (Exhibit A). "Expert" as used  
7 in this Protective Order shall mean a person with specialized knowledge or experience in a matter  
8 pertinent to the litigation who has been retained by a Party or its counsel to serve as an expert  
9 witness or as a consultant in this action and who is not a past or a current employee of a Party or  
10 of a competitor of a Party's and who, at the time of retention, is not anticipated to become an  
11 employee of a Party or a competitor of a Party's. This definition includes a professional jury or  
12 trial consultant retained in connection with this litigation;

13 (c) to the Court and its personnel in this action, including any relevant appellate  
14 court, in the event that any portion of this action is appealed;

15 (d) to court reporters, their staffs, and professional vendors to whom disclosure  
16 is reasonably necessary for this litigation;

17 (e) to the officers, directors and employees of the Receiving Party to whom  
18 disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be  
19 Bound by Protective Order" (Exhibit A);

20 (f) to any person who Counsel have a good faith basis to believe authored or  
21 previously received the material and who have signed the "Agreement to Be Bound by Protective  
22 Order" (Exhibit A);

23 (g) to potential witnesses in the action for whom Counsel has a good-faith basis  
24 to believe disclosure is reasonably necessary and who have signed the "Agreement to Be Bound  
25 by Protective Order" (Exhibit A). Counsel obtaining such signed Agreements to Be Bound by  
26 Protective Order shall retain them. The Designating Party reserves the right to seek disclosure of  
27 and/or copies of any such signed Agreements to Be Bound by Protective Order, and Counsel  
28 obtaining such signed Agreements reserves the right to challenge any such request.

6       3.2     Disclosure of “Highly Confidential – Attorneys’ Eyes Only” Information. Unless  
7 otherwise ordered by the Court or permitted in writing by the Designating Party, a Receiving Party  
8 may disclose any information or items designated “Highly Confidential – Attorneys’ Eyes Only”  
9 only:

14 (b) to any Expert (defined above) to whom disclosure is reasonably necessary  
15 for this litigation who has signed the "Agreement to Be Bound by Protective Order" (Exhibit A);

16 (c) to the Court and its personnel in this action, including any relevant appellate  
17 court, in the event that any portion of this action is appealed;

18 (d) to court reporters, their staffs, and professional vendors to whom disclosure  
19 is reasonably necessary for this litigation;

20 (e) to any person who Counsel have a good faith basis to believe authored or  
21 previously received the material and who have signed the "Agreement to Be Bound by Protective  
22 Order" (Exhibit A);

23 (f) to any person who is an employee of the Designating Party, or a former  
24 employee of the Designating Party (if they were employed by the Designating Party when the  
25 Highly Confidential – Attorneys' Eyes Only Information was created);

26 (g) to potential witnesses in the action for whom Counsel has a good-faith basis  
27 to believe disclosure is reasonably necessary for this litigation, provided that: (i) the procedures set  
28 forth in Paragraph 3.3 below are followed, and pursuant to such the Designating Party has not

1 objected to such disclosure or the Court has authorized and approved such disclosure, and (ii) the  
2 potential witness has signed the "Agreement to Be Bound by Protective Order" (Exhibit A) and a  
3 copy of such Agreement has been provided to Counsel for the Designating Party.

4 (h) to witnesses during their depositions for whom Counsel has a good-faith  
5 basis to believe disclosure is reasonably necessary for this litigation, provided that: (i) the  
6 procedures set forth in Paragraph 3.3 below are followed, and pursuant to such the Designating  
7 Party has not objected to such disclosure or the Court has authorized and approved such  
8 disclosure, and (ii) the witness is shown a copy of this Protective Order. The portions of the  
9 deposition transcript pertaining to such Highly Confidential Information shall automatically be  
10 deemed designated as "Highly Confidential" (and any such Highly Confidential Information  
11 marked as an exhibit during a deposition shall continue to be designated as "Highly  
12 Confidential").

13       3.3 Procedures for Approving Disclosure of "Highly Confidential – Attorneys' Eyes  
14 Only" Information or Items to Witnesses or Potential Witnesses.

15 (a) Unless otherwise ordered by the court or agreed in writing by the  
16 Designating Party, a Party that seeks to disclose to a witness or potential witness any information  
17 or item that has been designated "Highly Confidential – Attorneys' Eyes Only" first must make a  
18 written request to the Designating Party that (1) identifies the specific Highly Confidential  
19 information that the Receiving Party seeks permission to disclose to the witness or potential  
20 witness, (2) sets forth the full name of the witness or potential witness and the city and state of his  
21 or her primary residence, and (3) identifies the witness or potential witness' current employer(s)  
22 and job title(s).

23 (b) A Party that makes a request and provides the information specified in the  
24 preceding paragraph may disclose the subject Protected Material to the identified witness or  
25 potential witness unless, within seven court days of delivering the request, the Party receives a  
26 written objection from the Designating Party. Any such objection must set forth in detail the  
27 grounds on which it is based.

16 4. RESPONSIBILITY FOR COMPLIANCE. The Party's Counsel who discloses  
17 "Confidential" or "Highly Confidential- Attorneys' Eyes Only" information shall be responsible  
18 for assuring compliance with the terms of this Order with respect to persons to whom such  
19 "Confidential" or "Highly Confidential- Attorneys' Eyes Only" information is disclosed, and shall  
20 obtain and retain the original "Agreement to Be Bound by Protective Order "executed by qualified  
21 recipients of "Confidential" or "Highly Confidential – Attorneys' Eyes Only" information (if such  
22 execution was required by the terms of this Order). If it comes to a Party's or non-party's  
23 attention that any materials that it designated for protection do not qualify for protection at all, or  
24 do not qualify for the level of protection initially asserted, that Party or non-party must promptly  
25 notify all other Parties that it is withdrawing or downwardly designating the mistaken designation.

## 26 | 5. CHALLENGES TO DESIGNATION.

27 5.1 A party shall not be obliged to challenge the propriety of a Confidential  
28 Information designation at the time made, and a failure to do so shall not preclude a subsequent

1 challenge thereto.

2       5.2     In the event a party objects to the designation of any material under this Order, the  
 3 objecting party shall consult with the Designating Party to attempt to resolve their differences. In  
 4 conferring, the objecting party must explain the basis for its belief that the confidentiality  
 5 designation was not proper and must give the Designating Party an opportunity to review the  
 6 designated material, to reconsider the circumstances, and, if no change in designation is offered, to  
 7 explain the basis for the chosen designation.

8       5.3     If the parties are unable to reach an accord as to the proper designation of the  
 9 material, after giving notice to the party which designated the material, the objecting party may  
 10 file and serve a motion under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if  
 11 applicable) that identifies the challenged material and sets forth in detail the basis for the  
 12 challenge. Each such motion must be accompanied by a competent declaration that affirms that  
 13 the movant has complied with the meet and confer requirements imposed in the preceding  
 14 paragraph and that sets forth with specificity the justification for the confidentiality designation  
 15 that was given by the Designating Party in the meet and confer dialogue.

16       5.4     If such a motion is made, the Designating Party has the burden of establishing that  
 17 the designation is proper. If no such motion is made, the material will retain its designation.  
 18 The “Confidential” or “Highly Confidential- Attorneys’ Eyes Only” status of the challenged  
 19 material shall be maintained until the Court shall rule on the motion.

20       6.     INADVERTENT FAILURE TO IDENTIFY MATERIALS AS “CONFIDENTIAL” OR  
 21       “HIGHLY-CONFIDENTIAL – ATTORNEYS’ EYES ONLY”.

22       A Producing Party that inadvertently fails to designate Discovery Materials as  
 23 “Confidential” or “Highly Confidential – Attorneys’ Eyes Only” pursuant to this Order at the time  
 24 of its production shall be entitled to make a correction to its designation. Such failure shall be  
 25 corrected by providing to the Receiving Party written notice of the error and substituted copies of  
 26 the inadvertently produced Discovery Materials. Any party receiving such inadvertently unmarked  
 27 Discovery Materials shall, within five (5) days of receipt of the substitute copies, destroy or return  
 28 to the law firm representing the producing party all copies of such mis-designated documents.

1 Those individuals who reviewed the mis-designated Discovery Materials prior to notice of the mis-  
 2 designation by the producing party shall abide by the provisions of this Order with respect to the  
 3 use and disclosure of any information contained in the mis-designated materials.

4 7. DISCLOSURE OF DISCOVERY MATERIALS PROTECTED BY THE ATTORNEY-  
 5 CLIENT PRIVILEGE OR WORK PRODUCT DOCTRINE.

6 Consistent with Federal Rule of Evidence 502, if a Party or non-party notifies any other  
 7 Party that it disclosed Discovery Materials that are protected from disclosure under the attorney-  
 8 client privilege, work product doctrine, and/or any other applicable privilege or immunity, or the  
 9 Receiving Party discovers such disclosure, the disclosure shall not be deemed a waiver in whole or  
 10 in part of the applicable privilege or protection, either as to the specific material or information  
 11 disclosed or as to any other material or information relating thereto or on the same or related  
 12 subject matter. If a Party or nonparty requests the return of such Discovery Materials pursuant to  
 13 this paragraph or if the Receiving Party recognizes that it has received Discovery Materials that,  
 14 based upon a reasonable interpretation, are subject to any of the privileges discussed in this  
 15 paragraph, the Receiving Party shall destroy or return all copies of such Discovery Materials to the  
 16 Producing Party within five (5) business days of receipt of such notice or discovery, shall provide  
 17 a certification of Counsel that all such disclosed Discovery Materials have been returned or  
 18 destroyed, and shall not use such items for any purpose until further order of the Court, except that  
 19 the Receiving Party may retain a copy of the Discovery Materials for purposes of evaluating the  
 20 claimed privilege and bringing a motion for an order allowing use of the Discovery Materials in  
 21 this Litigation, but further provided that the Receiving Party may not challenge the privilege or  
 22 immunity claim by arguing that the disclosure waived the privilege or immunity and may not use  
 23 the Discovery Materials for any other purpose whatsoever until the Court has determined that the  
 24 Discovery Materials are not privileged. If the Court determines that the Discovery Materials are  
 25 privileged, the Receiving Party must return the Discovery Materials to the Producing Party within  
 26 five days of the Court's ruling.

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1       8. **PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER**  
 2       **LITIGATION.**

3       8.1      If a Receiving Party is served with a subpoena or an order issued in separate  
 4      litigation that would compel disclosure of any information or items designated in this action as  
 5      “Confidential” or “Highly Confidential – Attorneys’ Eyes Only,” the Receiving Party must so  
 6      notify the Designating Party, in writing (by email or fax, if possible) immediately and in no event  
 7      more than five (5) court days after receiving the subpoena or order. Such notification must  
 8      include a copy of the subpoena or court order.

9       8.2      The Receiving Party also must immediately inform in writing the party who caused  
 10     the subpoena or order to issue in the other litigation that some or all the material covered by the  
 11     subpoena or order is the subject of this Order. In addition the Receiving Party must deliver a copy  
 12     of this Order promptly to the party in the other action that caused the subpoena or order to issue.

13       8.3      The purpose of imposing these duties is to alert the interested parties to the  
 14     existence of this Order and to afford the Designating Party in this case an opportunity to protect its  
 15     confidentiality interest in the court from which the subpoena or order is issued. The Designating  
 16     Party shall bear the burden and the expense of seeking protection in that court of its Protected  
 17     Material, and nothing in these provisions should be construed as authorizing or encouraging a  
 18     Receiving Party in this action to disobey a lawful directive from another court.

19       9. **UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL.**

20       If a Receiving Party learns that, by inadvertence, it has disclosed Protected Material to any  
 21     person or in any circumstance not authorized under this Order, the Receiving Party must  
 22     immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its  
 23     best efforts to retrieve all copies of the Protected Material, (c) inform the person or persons to  
 24     whom unauthorized disclosures were made of all the terms of this Order, and (d) request such  
 25     person or persons to execute the Agreement that is attached hereto as Exhibit A.

26       10. **FILING CONFIDENTIAL MATERIAL WITH THE COURT.**

27       Without written permission from the Designating Party or a court order secured after  
 28     appropriate notice to all interested persons, a Party may not file in the public record in this action  
 any Discovery Materials designated as “Confidential” or “Highly Confidential – Attorneys’ Eyes

1 Only.” A Party that seeks to file under seal any Protected Material must comply with Civil Local  
 2 Rule 79-5.

3 11. INTRODUCING CONFIDENTIAL INFORMATION IN COURT PROCEEDINGS.

4 A Party who seeks to introduce “Confidential” or “Highly Confidential –Attorneys’ Eyes  
 5 Only” information at a hearing, pretrial or other proceeding shall advise the Court at the time of  
 6 introduction that the information sought to be introduced is protected. If the party who designated  
 7 the information as “Confidential” or “Highly Confidential – Attorneys’ Eyes Only” requests the  
 8 protection be continued, the Court will review the information to determine if the information is  
 9 entitled to continued protection. Prior to disclosure of “Confidential” or “Highly Confidential –  
 10 Attorneys’ Eyes Only” information at a hearing, the Producing Party may seek further protections  
 11 against public disclosure from the Court.

12 12. USE AND DISCLOSURE OF INDEPENDENTLY OBTAINED INFORMATION.

13 Nothing herein shall impose any restriction on the use or disclosure by a Party or its agent  
 14 of its own information, or of publicly available information, or of information lawfully available  
 15 to that Party, or of information that lawfully came into the possession of the Party independent of  
 16 any disclosure of Discovery Materials in this Litigation.

17 13. ADVICE TO CLIENT.

18 Nothing in this Order will bar or otherwise restrict Counsel from rendering advice to his or  
 19 her client with respect to this matter or from generally referring to or relying upon “Confidential”  
 20 or “Highly Confidential – Attorneys’ Eyes Only” material in rendering such advice.

21 14. DURATION OF ORDER/RETURN OF CONFIDENTIAL INFORMATION.

22 All provisions of this Order restricting the use of “Confidential” or “Highly Confidential –  
 23 Attorneys’ Eyes Only” information shall continue to be binding after the conclusion of this action,  
 24 unless otherwise agreed or ordered by the Court. Within sixty days of the conclusion of the  
 25 Proceeding (whether by entry of a final order of dismissal, judgment, settlement, or disposition on  
 26 appeal, or otherwise), a Producing Party may request that a person in the possession of the  
 27 Producing Party’s “Confidential” or “Highly Confidential – Attorneys’ Eyes Only” information  
 28 return or destroy that information (other than Outside Counsel’s copies of documents filed with

1 the Court or Outside Counsel's file copies of documents attached to or information incorporated in  
 2 attorney work product prepared in connection with this litigation). If the Receiving Party elects to  
 3 destroy the "Confidential" or "Highly Confidential – Attorneys' Eyes Only" information, it shall  
 4 certify within sixty days that such information has been destroyed. To the extent any person  
 5 retains copies of the "Confidential" or "Highly Confidential – Attorneys' Eyes Only" information  
 6 pursuant to the terms of this paragraph, such "Confidential" or "Highly Confidential – Attorneys'  
 7 Eyes Only" information shall continue to be subject to the protections provided by this Order.

8 15. RESERVATION OF RIGHTS.

9 Nothing contained in this Order or any designation of confidentiality hereunder, or any  
 10 failure to make such designation, shall be used or characterized by any party as an admission by a  
 11 Party or a Party opponent. Nothing in this Order shall be deemed an admission that any particular  
 12 information designated as "Confidential" or "Highly Confidential – Attorneys' Eyes Only" is  
 13 entitled to protection under the Order, Fed. R. Civ. P. 26(c), or any other law. Nothing in this  
 14 Order shall be construed as granting any person or entity a right to receive specific "Confidential"  
 15 or "Highly Confidential – Attorneys' Eyes Only" information where a court has entered an order  
 16 precluding that person or entity from obtaining access to that information. The Parties specifically  
 17 reserve the right to challenge the designation of any particular information as "Confidential" or  
 18 "Highly Confidential – Attorneys' Eyes Only," and no Party waives any right it otherwise would  
 19 have to object to disclosing or producing any information or item on any ground not addressed in  
 20 this Order. Similarly, no Party waives any right to object on any ground to introduction or use as  
 21 evidence of any of the Discovery Materials covered by this Order.

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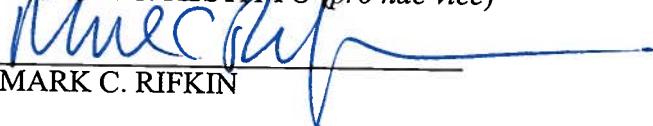
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1 **STIPULATED TO AND AGREED BY:**

2 May 12, 2009

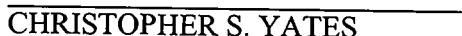
3 WOLF HALDENSTEIN ADLER  
4 FREEMAN & HERZ LLP  
5 MARK C. RIFKIN (*pro hac vice*)  
6 ALEXANDER H. SCHMIDT (*pro hac vice*)  
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Plaintiffs' Interim Lead Counsel

May \_\_, 2009

LATHAM & WATKINS LLP  
DANIEL M. WALL  
ALFRED C. PFEIFFER, JR.  
CHRISTOPHER S. YATES  
SADIK HUSENY



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Attorneys for Defendant APPLE INC.

May \_\_, 2009

CROWELL & MORING LLP  
JASON C. MURRAY  
KYLER E. SMART



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Attorneys for Defendant AT&T Mobility LLC

**IT IS SO ORDERED:**

May 21 2009

  
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RICHARD SEEBORG  
United States Magistrate Judge

1 **STIPULATED TO AND AGREED BY:**

2 May \_\_, 2009

WOLF HALDENSTEIN ADLER  
FREEMAN & HERZ LLP  
MARK C. RIFKIN (*pro hac vice*)  
ALEXANDER H. SCHMIDT (*pro hac vice*)  
MARTIN E. RESTITYO (*pro hac vice*)

6 

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MARK C. RIFKIN

7 Plaintiffs' Interim Lead Counsel

8 May 12, 2009

9 LATHAM & WATKINS LLP  
10 DANIEL M. WALL  
11 ALFRED C. PFEIFFER, JR.  
12 CHRISTOPHER S. YATES  
13 SADIK HUSENY



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CHRISTOPHER S. YATES

14 Attorneys for Defendant APPLE INC.

15 May \_\_, 2009

16 CROWELL & MORING LLP  
17 JASON C. MURRAY  
18 KYLER E. SMART

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JASON C. MURRAY

19 Attorneys for Defendant AT&T Mobility LLC

21 **IT IS SO ORDERED:**

22 May \_\_, 2009

23 

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RICHARD SEEBORG  
24 United States Magistrate Judge

1 **STIPULATED TO AND AGREED BY:**

2 May \_\_, 2009

WOLF HALDENSTEIN ADLER  
FREEMAN & HERZ LLP  
MARK C. RIFKIN (*pro hac vice*)  
ALEXANDER H. SCHMIDT (*pro hac vice*)  
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MARK C. RIFKIN

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8 May \_\_, 2009

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13 SADIK HUSENY

14 

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CHRISTOPHER S. YATES

15 Attorneys for Defendant APPLE INC.

16 May 15, 2009

17 CROWELL & MORING LLP  
18 JASON C. MURRAY  
19 KYLER E. SMART

20   
21 JASON C. MURRAY

22 Attorneys for Defendant AT&T Mobility LLC

23 **IT IS SO ORDERED:**

24 May \_\_, 2009

25 

---

RICHARD SEEBORG  
26 United States Magistrate Judge

## EXHIBIT A

## AGREEMENT TO BE BOUND BY PROTECTIVE ORDER

I, \_\_\_\_\_ [print or type full name], of \_\_\_\_\_  
[print or type full address], declare under penalty of perjury that I have read in its entirety and  
understand the Protective Order that was issued by the United States District Court for the  
Northern District of California on \_\_\_\_\_ in the case of In Re Apple & AT&T Antitrust  
Litigation, Case No. C 07-05152 JW. I agree to comply with and to be bound by all the terms of  
this Protective Order and I understand and acknowledge that failure to so comply could expose me  
to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose  
in any manner any information or item that is subject to this Protective Order to any person or  
entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Northern District of California for the purpose of enforcing the terms of this Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint \_\_\_\_\_ [print or type full name] of  
\_\_\_\_\_ [print or type full address and telephone number]  
as my California agent for service of process in connection with this action or any proceedings  
related to enforcement of this Protective Order.

Date:

City and State where sworn and signed:

Printed name:

[printed name]

Signature:

[signature]

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STIPULATED PROTECTIVE ORDER  
MASTER FILE NO. C 07-05152 JW